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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,551	08/20/2003	Lisa Schmitt	P 1079.13001	6636

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EXAMINER

BUI, LUAN KIM

ART UNIT PAPER NUMBER

3728

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,551

Applicant(s)

SCHMITT, LISA

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 16-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 16-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

Continued Prosecution Application

1. The Request for Continued Examination (RCE) filed on 10/16/2006 under 37 CFR 1.114 based on parent Application No. 10/644,551 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Donoghue (3,347,420). Donoghue discloses a measuring and storage container comprising a plurality of compartments (16, 18) for receiving respective portions of a substance with each compartment defining maximum filling elevations in a stable orientation of the container (top edges of the compartment) and indicia (54) indicating the position of at least one fill level and the at least one fill level is at a level below the respective maximum filling elevation (Figures 2 and 4).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spreen (1,688,887) in view of Fraenkel (6,311,500) and Shepherd (2,863,305) or Hughes (5,520,278). Spreen discloses in the embodiment of Figure 4, a storage container (11) for forming ice blocks comprising a plurality of compartments formed by removable partitions (17) defining respective maximum filling elevations thereof (top edges of the compartments) in a stable orientation of the container. Spreen also discloses the other claimed limitations except for the compartments comprise indicia indicating the position of at least one fill level below the maximum filling elevation.

Fraenkel teaches a storage container (10, 20, 100) for forming ice blocks comprising a plurality of compartments (12, 22) defining respective maximum filling elevations thereof (top edges of the compartments) in a stable orientation of the container. Fraenkel further discloses each compartment may not be filled to the top but rather about six percent of the compartment may be left empty to allow the water in the compartment to expand during freezing (column 2, lines 45-48) which is considered equivalent to the at least one fill level is at a level below the respective maximum filling elevation. Shepherd shows a transparent bag (11) having indicia (12) indicating the position of at least one fill level of water (14) into the bag. Hughes shows a measuring cup/container (10, 18) comprising a compartment having a top edge/maximum filling level and at least one indicia indicating the position of at least one fill level below the maximum filling level.

It would have been obvious to one having ordinary skill in the art in view of Fraenkel and Shepherd or Hughes to modify the container of Spreen so each compartment includes at least one

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fill level disposed below the maximum filling elevation as taught by Fraenkel to allow the water in the compartment to expand during freezing and the at least one fill level comprises indicia indicating the position of the at least one fill level as taught by Shepherd or Hughes to provide more convenient for the user when filling the compartments.

As to claims 3 and 4, Fraenkel discloses the container formed from a transparent plastic material and the compartments are integrally molded with the container.

As to claim 16, Hughes shows more than one indicia indicating the positions of fill levels.

6. Claims 7-9 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Andress et al. (5,356,026; hereinafter Andress'026). To the extent that Spreen further fails to show multiple instances of the container being stackable and each of the multiple instances of the container includes a lid being adapted to snap-fit onto the container, Andress'026 suggests a container assembly (10) comprising a container (12) and a lid (11) adapted to snap-fit (52, 55, 60, 61). Andress'026 further suggests the container includes a bottom surface (25-27) complementary to the lid (13, 14) so that multiple instances of the container with the lid fitted thereon are stackable. It would have been obvious to one having ordinary skill in the art in view of Andress'026 to modify the container of Spreen as modified so the container includes a lid adapted to snap-fit onto the container for better securing the contents within the container and the container are stackable to reduce space during storage.

Response to Arguments

Applicant's arguments filed on 10/16/2006 have been fully considered but they are not deemed to be persuasive.

1) Applicant's arguments with respect to section 1) in the remarks are noted. They are not persuasive because the motivation and/or teaching is clearly disclosed by Fraenkel in column 2, lines 45-48 to allow the water in the compartment to expand during freezing.

2) Applicant's arguments with respect to section 2) in the remarks are noted. They are not persuasive because if the ice cube trays of the prior art of record in the instant patent application with filling indicia then the claims are rejected under 35 U.S.C. 102 instead of 35 U.S.C. 103(a) and also Hughes or Shepherd shows the container with filling indicia to provide more convenient for the users.

3) Applicant's arguments with respect to section 3) in the remarks are noted. They are unpersuasive because each of Hughes or Shepherd shows the container with filling indicia to allow the users when filling the container to fill to the measured levels and Fraenkel teaches not the fill the ice tray to the top level to allow the water to expand during freezing. There does not appear to be anything unobvious about using the teaching of Fraenkel and Hughes or Shepherd to modify the ice tray of Spreen so it includes indicia indicating the at least one fill level below the maximum filling elevation to provide more convenient for the user when filling the compartments.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
November 9, 2006



Luan K. Bui
Primary Examiner
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